

Appl. No. : 10/628,079  
Filed : July 24, 2003

### **REMARKS**

New Claims 25-30 have been added. Claims 2-3, 8, and 18-21 have been cancelled. As such, pending Claims 1, 4-7, 9-17, and 22-30 are currently presented for examination.

Claims 1, 4, 13-14, 17, 22-23 have been amended. These amendments are fully supported by the original claims and the specification as originally filed, for example, at page 5, lines 6-9; page 5, lines 13-15; page 9, lines 6-7; and elsewhere throughout the specification. As such, no new matter has been added.

After having carefully considered the Office Action mailed on March 17, 2006, Applicant respectfully traverses the Examiner's claim rejections.

### **Rejections Under 35 U.S.C. § 102**

The Examiner rejects Claims 1-7, 9-12, 14-24 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,129,903 (Luhr et al.). In particular, Examiner asserts that Luhr et al. discloses an apparatus comprising superior and inferior endpieces and a compressible mechanisms comprising a sliding mechanism. The sliding mechanism further comprising mating arms, sliders, joining a slider to an end piece, a plurality of teeth, a gear, etc. to enable a compressed arrangement.

However, Examiner has noted that dependent Claim 8 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With these amendments, Applicant respectfully submits that independent Claims 1, 14, 17, 22, and 23 have been amended to capture those features of Claim 8 which place the amended claims, as well as the claims dependent thereon, in a condition for allowance.

Independent Claim 1 and dependent Claim 4 have been amended to recite a compressible sliding section, wherein "each back of each slider comprises a flange that fits within a port in each endpiece, thereby joining the slider and endpiece." Independent Claim 14 has been amended to recite a separate step of "engaging a compressible central body with said endpieces." Independent Claim 17 has been amended to recite a separate step of "engaging a compressible central body with said intermediate endpiece and another one of said endpieces." Independent Claim 22 has been amended to recite "means for removably coupling during surgery the

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endpieces.” Independent Claim 23 has been amended to recite “means for removably coupling during surgery the endpieces.”

With these designs, the endpieces can be attached to their respective vertebral bodies in a step separate from the attachment of the compressible section. That is, it is possible to join the compressible section to the endpieces after the attachment of the endpieces to the vertebral bodies during surgery. After joining the compressible section, the distance between the superior and inferior endpieces can be then shortened by using the compressible section to compress any intermediate disk space.

These aspects of the invention are not in Luhr et al. The reference does not teach a vertebral fusion device comprising endpieces can be engaged with a compressible section after the installation of the endpieces onto vertebral bodies. Because of this, Applicant respectfully submits that Luhr et al. does not teach every element of independent Claims 1, 14, 17, 22, and 23, and that Luhr et al. does not anticipate or render obvious the inventions defined by these claims. For at least the same reasons, Luhr et al. should be removed as a reference for claims dependent thereon.

#### **Amended Claim 13**

Dependent Claim 13 has been amended with the insertion of the words “endpiece is” after the word “intermediate,” and also amended with the removal of redundant references. These amendments were done to clarify the grammar in order to convey the original intent of the claim.

#### **New Claims 25-30**

Applicant has added the following new dependent claims: new dependent Claim 25, being dependent on independent Claim 24; new dependent Claims 26-27, being dependent on independent Claim 14; and new dependent Claims 28-30, being dependent on independent Claim 17. Applicant submits that each of these new claims be allowed for the at least the same reasons as the allowance of the independent claims.

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**CONCLUSION**


Applicant believes that all outstanding issues in this case have been resolved and that the present claims are in condition for allowance. Favorable action is respectfully requested. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to contact the undersigned at the telephone number provided below in order to expedite the resolution of such issues.

Please apply any charges or credits, including any fees for an extension of time, to  
Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 7/17/06

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